

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 9

In The Matter Of:

South Bay Asbestos Area Site  
Mr. William Schwartz  
WSP Trucking, Inc.,

Respondents.

Proceeding Under Section 106(a) of  
the Comprehensive Environmental  
Response, Compensation, and  
Liability Act of 1980, as amended  
(42 U.S.C. section 9606(a))

U.S. EPA  
Docket No. 91-25

ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

This Order directs Respondents, Mr. William Schwartz and WSP Trucking Inc., to design and implement a portion of the remedial actions described in the Record of Decision for the South Bay Asbestos Area Superfund site, dated September 29, 1989, for the property identified as Area 10 in Section VI of this Order. This Order is issued to Respondents by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by Sections 104(e) and 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Sections 9604(e) and 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580

1 (52 Fed. Reg. 2926, January 29, 1987), redelegated to EPA  
2 Regional Administrators on September 13, 1987 by EPA Delegation  
3 No. 14-14-B, and was further delegated to the Director, Hazardous  
4 Waste Management Division, EPA Region 9 by Order R1290.43, dated  
5 October 26, 1988.

## 6 II. FINDINGS OF FACT

7 1. The South Bay Asbestos Area Superfund site ("SBAA Site"  
8 or "Site") encompasses approximately 550 acres and is located at  
9 the northern end of Santa Clara Valley and at the southernmost  
10 end of San Francisco Bay (Attachment 1, Figure 1). The SBAA Site  
11 is located in the community of Alviso, which is the northernmost  
12 section of the City of San Jose, California (Attachment 1, Figure  
13 2). The Site contains numerous truck and industrial yards within  
14 its boundaries. This Order specifically addresses the property  
15 designated for the purposes of this Order as Area 10, located ap-  
16 proximately at the northwest end of Pacific Street (in Alviso),  
17 San Jose, California (identified more precisely in Attachment 2,  
18 Figure 3) and is identified in the records of the Santa Clara  
19 County Tax Assessor as Parcel # 015-14-011.

20 2. The property (hereinafter referred to as "Area 10") is  
21 currently owned by William Schwartz, who has owned this property  
22 since 1977.

23 3. WSP Trucking, Inc. operates a trucking business at Area  
24 10, which consists of the transport and delivery of fill  
25 material. The trucking business requires the movement of trucks  
26 and other vehicular traffic over unpaved soils at Area 10. In  
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1 response to inquiries from an EPA representative in January 1990,  
2 Mr. William Schwartz indicated that vehicular traffic at Area 10  
3 was approximately twenty-five (25) vehicle-trips per day. As the  
4 soils in Area 10 are contaminated with asbestos, the level of  
5 vehicular traffic through Area 10 may generate releases of dust  
6 into the air which contain a significant amount of asbestos  
7 fibers.

8 4. In October 1984, pursuant to section 105 of CERCLA, 42  
9 U.S.C. Section 9605, EPA placed the SBAA Site on the National  
10 Priorities List, set forth at 40 C.F.R. Part 300, Appendix B (48  
11 Fed. Reg. 40658).

12 5. From approximately June 1986 to approximately January  
13 1989, EPA undertook a Remedial Investigation and Feasibility  
14 Study ("RI/FS") to determine the nature and extent of contamina-  
15 tion at the Site, and to provide the necessary information to  
16 select the final remedial action at the Site, pursuant to CERCLA  
17 and the National Contingency Plan, 40 C.F.R. Part 300 ("NCP").

18 6. Pursuant to section 117 of CERCLA, 42 U.S.C. Section  
19 9617, on June 7, 1989, EPA published notice of the completion of  
20 the Feasibility Study and of the availability of the proposed  
21 plan for the final remedial action, and provided opportunity for  
22 public comment on the proposed final remedial action.

23 7. The decision by EPA on the final remedial action to be  
24 implemented at the Site is embodied in a final Record of Decision  
25 ("ROD"), executed on September 29, 1989. The State of California  
26 has reviewed the ROD and did not have any comments on the techni-

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1 cal nature of the remedy selected by EPA. The Record of Decision  
2 is attached to this Order as Attachment 1 and is incorporated by  
3 reference. The Record of Decision is supported by an administra-  
4 tive record that contains the documents and information upon  
5 which EPA based the selection of the response action. The ad-  
6 ministrative record was available for public review during the  
7 period for public comment on the proposed remedial action. The  
8 administrative record is located at the San Jose Public Library,  
9 Alviso Branch, the Family Health Foundation, Community Health  
10 Education office in Alviso, and in EPA's Region 9 office.

11 8. Based on the September 29, 1989 ROD, the final remedy  
12 selected for the Site consists of (1) paving asbestos con-  
13 taminated truck and industrial yards; (2) monthly wet sweeping of  
14 Alviso streets; (3) removal of asbestos waste debris; (4) verify-  
15 ing adequacy of cover material and placing deed restrictions on  
16 landfills; and (5) establishing routine maintenance controls for  
17 the remediation. A complete description of the final remedy for  
18 this Site is contained in the September 29, 1989 ROD.

19 9. The hazardous substance of primary concern found at the  
20 Site is asbestos. Asbestos has been designated by EPA as a known  
21 human carcinogen. EPA sampling has detected asbestos in the air,  
22 soils, and groundwater at the Site.

23 10. The current land uses of the Site consist of a mix of  
24 agricultural, light industrial, commercial and residential uses.  
25 Actual or threatened releases from this Site, if not addressed by  
26 implementing the response action selected in the ROD, may present

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1 an imminent and substantial endangerment to the public health,  
2 welfare or the environment. EPA has determined that remediation  
3 is appropriate based on the following facts:

4 (a) Asbestos is a known human carcinogen with no known  
5 threshold level of exposure below which the risk of developing  
6 cancer is reduced to zero;

7 (b) Asbestos is present in soils in Area 10 and other areas  
8 in the SBAA Site, at concentrations greater than 1 area percent,  
9 as measured by Polarized Light Microscopy (PLM), and was found as  
10 high as 6.4% at Area 10;

11 (c) Business operations at Area 10 require frequent  
12 vehicular traffic over contaminated soils, as described in  
13 Paragraph 3 of this Section. The ROD identifies inhalation of  
14 airborne asbestos from the physical disturbance of soils as the  
15 exposure pathway representing the most significant risk to human  
16 health. See Attachment 1, p. 13; and

17 (d) Based on EPA's risk assessment for this site, the risk  
18 of human exposure to airborne asbestos at levels found in the  
19 vicinity of Area 10 exceeds the threshold of risk warranting  
20 remediation under the NCP.

21 11. The ROD requires paving of areas where asbestos is  
22 found in surface soils in levels exceeding 1 area percent as  
23 measured by PLM, and which also receive or have the potential to  
24 receive heavy vehicular traffic. In order to determine which  
25 properties require the Paving Remedy, EPA conducted sampling and  
26 analysis of soils as described in the Final Sampling and Analysis  
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1 Summary Report (Attachment 2). The results of samples from Area  
2 10 exceed 1 area percent asbestos, as measured by PLM, and Area  
3 10 receives and has the continuing potential to receive heavy  
4 vehicular traffic.

5 III. CONCLUSIONS OF LAW AND DETERMINATIONS

6 1. Area 10 is a "facility" as defined in Section 101(9) of  
7 CERCLA, 42 U.S.C. Section 9601(9).

8 2. Respondents are each a "person" as defined in Section  
9 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

10 3. Respondents are each a "liable party" as defined in  
11 Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), and each is  
12 subject to this Order under Section 106(a) of CERCLA, 42 U.S.C.  
13 Section 9606(a).

14 4. Asbestos found at Area 10 is a "hazardous substance" as  
15 defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

16 5. Asbestos has been released at Area 10 and is continuing  
17 to be released or threatened to be released from the soil into  
18 the air, which constitutes a "release", as defined in Section  
19 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

20 6. The release or threat of release of asbestos from the  
21 facility may present an imminent and substantial endangerment to  
22 the public health, welfare, or the environment.

23 7. The actions required by this Order are necessary to  
24 protect the public health, welfare, or the environment.

1 IV. NOTICE TO THE STATE

2 Prior to issuing this Order, EPA notified the State of  
3 California Environmental Protection Agency, Department of Toxic  
4 Substances Control of its intent to issue this Order.

5 V. ORDER

6 Based on the foregoing, Respondents are hereby ordered to  
7 comply with the following provisions, including but not limited  
8 to all attachments to this Order, all documents incorporated by  
9 reference into this Order, and all schedules and deadlines in  
10 this Order, attached to this Order, or incorporated by reference  
11 into this Order.

12 VI. DEFINITIONS

13 1. Unless otherwise expressly provided herein, terms used  
14 in this Order which are defined in CERCLA or in regulations  
15 promulgated under CERCLA shall have the meaning assigned to them  
16 in the statute or its implementing regulations. Whenever terms  
17 listed below are used in this Order or in the documents attached  
18 to this Order or incorporated by reference into this Order, the  
19 following definitions shall apply:

20 2. "Area 10" shall mean the property identified as Number  
21 10 in Figure 3 of Attachment 2 which is subject to the Remedial  
22 Design and Remedial Action requirements. Area 10 is located at  
23 the northwest end of Pacific Street (in Alviso), San Jose,  
24 California, and is identified in the records of the Santa Clara  
25 County Tax Assessor as Parcel # 015-14-011.

1           3.    "CERCLA" shall mean the Comprehensive Environmental  
2   Response, Compensation, and Liability Act of 1980, as amended, 42  
3   U.S.C. Sections 9601, et seq.

4           4.    "Day" shall mean a calendar day unless expressly stated  
5   to be a working day. "Working day" shall mean a day other than a  
6   Saturday, Sunday, or Federal holiday. In computing any period of  
7   time defined in "days" under this Order, where the last day would  
8   fall on a Saturday, Sunday, or Federal holiday, the period shall  
9   run until the end of the next working day.

10          5.    "Deliverable" shall mean any plan, report, document, or  
11   any other item required of the Respondents under this Order.

12          6.    "EPA" shall mean the United States Environmental  
13   Protection Agency.

14          7.    "National Contingency Plan" or "NCP" shall mean the Na-  
15   tional Oil and Hazardous Substances Pollution Contingency Plan  
16   promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. Section  
17   9605, codified at 40 C.F.R. Part 300, including any amendments  
18   thereto.

19          8.    "Operation and Maintenance" or "O&M" shall mean all ac-  
20   tivities required under the Operation and Maintenance Plan  
21   developed by Respondents pursuant to this Order as approved by  
22   EPA.

23          9.    "Paragraph" shall mean a portion of this Order iden-  
24   tified by an arabic numeral.

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1           10. "Paving Remedy" shall mean the response actions con-  
2       sisting of applying asphalt, concrete, or other encapsulating  
3       material over all portions of Area 10 which were found by EPA to  
4       be contaminated with asbestos above the allowable limit of 1 area  
5       percent by PLM and which are potentially subject to vehicular  
6       traffic.

7           11. "Performance Standards" shall mean those cleanup stan-  
8       dards, standards of control, and other substantive requirements,  
9       criteria or limitations, identified in the Record of Decision and  
10      in Section X of this Order, that the Work required by this Order  
11      must attain and maintain. In particular, the Respondents shall  
12      take active measures to prevent releases of asbestos from Area 10  
13      at any time during and subsequent to the construction of the  
14      Paving Remedy, including the design and construction of a pave-  
15      ment adequate to ensure complete encapsulation of asbestos-  
16      contaminated soil to prevent the release of asbestos to the air  
17      and the implementation of operations and maintenance measures to  
18      ensure the pavement continues to encapsulate the asbestos in the  
19      future.

20          12. "PLM" or Polarized Light Microscopy means the EPA- ap-  
21      proved test method for analysis of bulk insulation samples and is  
22      the analytical test method required in the ROD and by this Order  
23      to determine the level of asbestos in soils at the truck and in-  
24      dustrial yards at the SBAA Site. Identification of asbestos  
25      fibers is made by optical analysis of samples using a polarized  
26      light microscope.

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1           13. "Record of Decision" or "ROD" shall mean the final EPA  
2 Record of Decision for the South Bay Asbestos Area Superfund  
3 Site, San Jose, California, signed on September 29, 1989, by the  
4 Regional Administrator, EPA Region 9, and all attachments  
5 thereto.

6           14. "Remedial Action" or "RA" shall mean those activities,  
7 including Operation and Maintenance, to be undertaken by Respon-  
8 dents to implement the final plans and specifications submitted  
9 by Respondents pursuant to the Remedial Design approved by EPA  
10 and required by Section X of this Order, including any additional  
11 activities required under Sections XI, XII, XIII, XIV and XV of  
12 this Order.

13           15. "Remedial Design" or "RD" shall mean those activities  
14 to be undertaken by Respondents to develop the plans and  
15 specifications for the Remedial Action required by Section X of  
16 this Order.

17           16. "Response Costs" shall mean all costs, including direct  
18 costs, indirect costs, and accrued interest incurred by the  
19 United States to perform or support response actions at the Site.  
20 Response costs include, but are not limited to, the costs of  
21 overseeing the Work, such as the costs of reviewing or developing  
22 plans, reports and other items pursuant to this Order, and costs  
23 associated with verifying the Work.

24           17. "Section" shall mean a portion of this Order identified  
25 by a roman numeral and including one or more paragraphs.

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1           18. "SBAA Site" or "Site" shall mean the South Bay Asbestos  
2 Area Superfund site (SBAA) as identified in Figure 2 of Attach-  
3 ment 1.

4           19. "State" shall mean the State of California Environmen-  
5 tal Protection Agency, Department of Toxic Substances Control ac-  
6 ting on behalf of the State of California.

7           20. "Work" shall mean all response activities Respondents  
8 are required to perform under this Order, including but not  
9 limited to, Remedial Design, Remedial Action, and any activities  
10 required to be undertaken pursuant to Sections IX through XVI of  
11 this Order.

#### 12                               VII. NOTICE OF INTENT TO COMPLY

13           Respondents shall each provide, not later than ten (10) days  
14 after the effective date of this Order, written notice to the EPA  
15 Remedial Project Manager (RPM) stating each Respondent's intent  
16 to comply with the terms of this Order. If EPA determines that a  
17 Respondent does not unequivocally commit to perform the Work as  
18 provided by this Order, such Respondent shall be deemed to have  
19 violated this Order and to have failed or refused to comply with  
20 this Order. Respondents' written notice shall describe, using  
21 facts that exist on or prior to the effective date of this Order,  
22 any "sufficient cause" defenses asserted by Respondents under  
23 sections 106(b) and 107(c)(3) of CERCLA. The absence of a  
24 response by EPA to the notice required by this Section shall not  
25 be deemed to be acceptance of Respondents' assertions.

VIII. PARTIES BOUND

1. This Order shall apply to and be binding upon the Respondents, their directors, officers, employees, agents, successors, and assigns. No change in the ownership, corporate status, or other control of WSP Trucking, Inc. shall alter any of the Respondents' responsibilities under this Order.

2. Each Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in either Respondent's assets, property rights, or stock are transferred to the prospective owner or successor. To ensure compliance with this Order, Respondents shall provide a copy of this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, within five days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing Respondents with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. Section 9607(b)(3). Notwithstanding the terms of any contract, Respon-

dents are responsible for compliance with this Order and for ensuring that its contractors, subcontractors and agents comply with and perform any Work in accordance with this Order.

IX. NOTICE OF OBLIGATIONS TO SUCCESSORS-IN-TITLE

1. Within ten (10) days after the effective date of this Order, any Respondent who owns all or any portion of Area 10 shall (1) record a copy or copies of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded; (2) record a notice of obligation to provide access and related covenants; and (3) ensure that the recording of this Order is indexed to the titles of each and every property within Area 10 so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Any Respondent who owns all or any portion of Area 10 shall, within fifteen (15) days after the effective date of this Order, send notice of full compliance with this Paragraph to EFA.

2. Not later than fifteen (15) days prior to any transfer of any real property interest in any property included within Area 10, Respondents who are transferring such property shall submit a true and correct copy of the transfer documents to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

1 X. WORK TO BE PERFORMED

2 A. General Obligations

3 1. Respondents shall cooperate with EPA in providing in-  
4 formation to the public regarding the Work. As requested by EPA,  
5 Respondents shall participate in the preparation of information  
6 for distribution to the public and in public meetings which may  
7 be held or sponsored by EPA to explain activities at or relating  
8 to the Site.

9 2. Respondents shall finance and perform, at their ex-  
10 pense, the implementation of the work as required by this Order  
11 within the time periods specified.

12 3. All aspects of the Work shall be performed by qualified  
13 employees or contractors of Respondents. Within thirty (30) days  
14 after the effective date of this Order, Respondents shall select  
15 the employees or contractors which Respondents propose to use in  
16 carrying out the Work under this Order and notify EPA in writing  
17 of the name and qualifications of the employees or contractors.  
18 Respondents' selected employees or contractors shall have exper-  
19 tise in design and construction of pavement.

20 4. EPA will review and approve/disapprove of Respondents'  
21 selected employees or contractors according to the terms of Sec-  
22 tion X.A.4. and Section XV.1. and XV.5. of this Order. If EPA  
23 disapproves of the selection of employees or a contractor,  
24 Respondents shall submit to EPA within 30 days after notice of  
25 EPA's disapproval a new list of contractors, including primary  
26 support entities and staff, that would be acceptable to Respon-

1 dents. EPA will thereafter provide written notice to Respondents  
2 of the names of the contractors that are acceptable to EPA.  
3 Respondents may then select any approved contractor(s) from that  
4 list and shall notify EPA of the name(s) of the contractor(s)  
5 selected within fifteen (15) days of EPA's designation of ap-  
6 proved contractors.

7 5. If at any time Respondents propose to use a different  
8 contractor, Respondents shall notify EPA and shall obtain ap-  
9 proval from EPA before the new contractor performs any Work under  
10 this Order.

11 6. Unless otherwise directed by EPA, Respondents shall not  
12 perform any Work under this Section prior to EPA's approval of  
13 such Work.

14 B. Remedial Design and Remedial Action for Paving Remedy

15 1. Within sixty (60) days after Respondents obtain EPA's  
16 approval of Respondents' selected employees or contractor,  
17 Respondents shall submit to EPA a draft of the remedial design  
18 plans and specifications ("Remedial Design" or "RD") for con-  
19 struction of the Paving Remedy over all unpaved portions of Area  
20 10 subject to vehicular traffic. The Remedial Design shall  
21 describe in detail the methods and materials to be used to con-  
22 struct the pavement and meet all requirements and Performance  
23 Standards in the ROD and in this Order, including measures to  
24 prevent the release of asbestos dust during construction. The  
25 Remedial Design shall include but is not limited to the follow-  
26 ing:

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1           a) Plans, including but not limited to visual represen-  
2     tations to scale of existing site conditions (e.g., driveways,  
3     existing pavement, parking areas, buildings, etc.) and areas to  
4     be newly paved to comply with this Order, with an estimate of to-  
5     tal area in square feet to be paved;

6           b) The proposed pavement cross section indicating the  
7     type of material to be used for paving (e.g., asphalt or  
8     concrete), thickness, surface preparation, and design basis as-  
9     sumptions;

10          c) A detailed description of specific measures to be  
11     employed during construction to prevent the visible emissions of  
12     asbestos dust from Area 10, and measures to assure worker health  
13     and safety, in accordance with the requirements described in  
14     Paragraph C.8 of this Section;

15          d) A description of construction methods to be  
16     employed including types of equipment, methods for surface  
17     preparation, and methods for application of paving material;

18          e) A plan and schedule for O&M activities as  
19     described in Paragraph C.6 of this Section; and

20          f) A schedule for implementing the Remedial Action,  
21     which incorporates the deadlines set forth in Paragraphs B.1, B.3,  
22     and B.4 of this Section.

23         3. Within sixty (60) days of receipt of EPA's comments on  
24     the draft Remedial Design, Respondents shall submit a final RD  
25     that incorporates EPA's comments.



1           4.    Within ninety (90) days of notification of EPA approval  
2   of the Remedial Design, the Respondents shall initiate physical  
3   construction of the Paving Remedy. Respondents shall provide EPA  
4   with thirty (30) days notice of the Respondents' intent to in-  
5   itiate construction.

6           5.    Upon approval by EPA, the Remedial Design is incor-  
7   porated into this Order and shall be an enforceable part of this  
8   Order.

9           6.    During Remedial Action, Respondents shall take measures  
10  to prevent generation of visible dust emissions and to ensure  
11  worker health and safety.

12          7.    Upon completion of the Remedial Action, Respondents  
13  shall implement the Operation and Maintenance (O&M) activities  
14  submitted in the Remedial Design and approved by EPA. O&M shall  
15  include, but not be limited to, the following:

16               a)   Annual inspections of the pavement beginning one  
17  year after completion of Remedial Action, including identifica-  
18  tion of cracks, holes and any other observable changes to the  
19  original condition of the pavement, and of actions required to  
20  repair the pavement, if necessary;

21               b)   Implementation of repairs, including repaving, if  
22  necessary;

23               c)   Certification, submitted in writing to EPA within  
24  thirty (30) days of the inspection, that the inspection was con-  
25  ducted, what the condition of the pavement is, and what repairs  
26  are necessary and were or will be made.

1                   C. General Requirements For the Work

2           1. The Work performed by Respondents pursuant to this Order  
3 shall, at a minimum, achieve Performance Standards.

4           2. Notwithstanding any action by EPA, Respondents remain  
5 fully responsible for achieving the Performance Standards. Noth-  
6 ing in this Order, or in EPA's approval of Respondents' submis-  
7 sions under this Order, shall be deemed to constitute a warranty  
8 or representation of any kind by EPA that full performance of the  
9 Work will achieve the Performance Standards. Respondents' com-  
10 pliance with such approved documents does not preclude EPA from  
11 seeking additional work to achieve the applicable Performance  
12 Standards.

13          3. The Paving Remedy shall extend to all areas subject to  
14 vehicular traffic or parking within Area 10.

15          4. The Paving Remedy shall be designed to standards  
16 capable of withstanding existing and predicted traffic uses, in-  
17 cluding types, weights, and frequencies of vehicles which use or  
18 may use the area. The thickness of the pavement material shall  
19 be four (4) inches at a minimum. Any proposed modifications to  
20 the specifications in this paragraph or elsewhere in this Section  
21 shall have adequate justification provided as part of the  
22 Remedial Design submittal for EPA review and approval.

23          5. The Paving Remedy shall have a minimum design life of  
24 ten (10) years utilizing commonly accepted engineering practices  
25 for paving such as those of the American Association of State  
26 Highway and Transportation Officials (AASHTO).

1           6. All materials and construction methods shall be in ac-  
2 cordance with the State of California Department of Transporta-  
3 tion (CALTRANS) Standard Specifications (January 1988), where ap-  
4 propriate.

5           7. Dust control measures may include, but are not limited  
6 to, soil wetting and selective use of equipment to minimize soil  
7 disturbance during construction.

8           8. The Remedial Design shall include measures to be taken  
9 during work to protect worker health and safety. The Remedial  
10 Design shall comply with the appropriate requirements of 29 C.F.R.  
11 Section 1910.120 (as amended by 54 Fed. Reg. 9294, March 6, 1989;  
12 Occupational Safety Health Guidance for Hazardous Waste Site Ac-  
13 tivities (October 1985, DHHS NIOSH, Publication No. 85-115), the  
14 NCP requirements for worker health and safety (40 CFR Section  
15 300.150) and any other applicable state or federal requirements.

16           9. All soils removed from Area 10 shall be disposed of or  
17 treated at a facility approved by EPA in accordance with Section  
18 121(d)(3) of CERCLA, 42 U.S.C. Section 9621(d)(3); with the U.S.  
19 EPA "Revised Off-Site Policy," OSWER Directive 9834.11, November  
20 13, 1987; and with all other applicable Federal, state, and local  
21 requirements.

22           10. Within thirty (30) days after Respondents conclude that  
23 the Work required by this Order has been fully performed, Respon-  
24 dents shall so notify EPA and schedule and conduct an inspection  
25 to be attended by Respondents and an EPA representative. The in-  
26 spection shall be followed by a written report submitted by

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1 Respondents within (30) days of the inspection, certifying that  
2 the Work has been completed in full satisfaction of the require-  
3 ments of this Order. If, after completion of the inspection and  
4 receipt and review of the written report, EPA determines that the  
5 Work or any portion thereof has not been completed in accordance  
6 with this Order, EPA shall notify Respondents in writing of the  
7 activities that must be undertaken to complete the Work and shall  
8 set forth in the notice a schedule for performance of such ac-  
9 tivities. Respondents shall perform all activities described in  
10 the notice in accordance with the specifications and schedules  
11 established therein. Nothing in this Section shall limit EPA's  
12 right to perform periodic reviews pursuant to Section 121(c) of  
13 CERCLA, 42 U.S.C. Section 9621(c), or to take or require any ac-  
14 tion that in the judgment of EPA is appropriate at the Site, in  
15 accordance with 42 U.S.C. Sections 9604, 9606, or 9607.

16 XI. FAILURE TO ATTAIN PERFORMANCE STANDARDS

17 1. In the event that EPA determines that Performance Stan-  
18 dards have not been met, EPA may notify Respondents that addi-  
19 tional response actions are necessary.

20 2. Unless otherwise stated by EPA, within thirty (30) days  
21 of receipt of notice from EPA that additional response activities  
22 are necessary to meet any applicable Performance Standards,  
23 Respondents shall submit for approval by EPA a work plan for the  
24 additional response activities. The plan shall conform to the  
25 applicable requirements of Sections X, XVII, and XVIII of this  
26 Order. Upon EPA's approval of the plan pursuant to Section XV,

27

1    Respondents shall implement the plan for additional response ac-  
2    tivities in accordance with the provisions and schedule contained  
3    therein.

4                                    XII. EPA PERIODIC REVIEW

5            Under Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c),  
6    and applicable regulations, EPA may review conditions at Area 10  
7    to assure that the Work performed pursuant to this Order ade-  
8    quately protects human health or the environment. Until such  
9    time as EPA certifies completion of the Work, Respondents shall  
10   conduct the requisite response actions as determined necessary by  
11   EPA in order to permit EPA to conduct the review under Section  
12   121(c) of CERCLA. As a result of any review performed under this  
13   Section, Respondents may be required to perform additional Work  
14   or to modify Work previously performed.

15                                  XIII. ADDITIONAL RESPONSE ACTIONS

16            1.    EPA may determine that in addition to the Work iden-  
17    tified in this Order, additional response activities may be  
18    necessary to protect human health or the environment. If EPA  
19    determines that additional response  
20    activities are necessary, EPA may require Respondents to submit a  
21    work plan for additional response activities. EPA may also re-  
22    quire Respondents to modify any plan, design, or other  
23    deliverable required by this Order.

24            2.    Not later than thirty (30) days after receiving EPA's  
25    notice that additional response activities are required pursuant  
26    to this Section, Respondents shall submit a work plan for the

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1 response activities to EPA for review and approval. Upon ap-  
2 proval by EPA, the work plan is incorporated into this Order as a  
3 requirement of this Order and shall be an enforceable part of  
4 this Order. Upon approval of the work plan by EPA, Respondents  
5 shall implement the work plan according to the standards,  
6 specifications, and schedule in the approved work plan. Respon-  
7 dents shall notify EPA in writing of their intent to perform such  
8 additional response activities within seven (7) days after  
9 receipt of EPA's request for additional response activities.

10 XIV. ENDANGERMENT AND EMERGENCY RESPONSE

11 1. In the event of any action or occurrence during the  
12 performance of the Work which causes or threatens to cause a  
13 release of a hazardous substance or which may present an im-  
14 mediate threat to public health or welfare or the environment,  
15 Respondents shall immediately take appropriate action to prevent,  
16 abate, or minimize the threat, and shall immediately notify EPA's  
17 Remedial Project Manager (RPM) (See Section XIX). If the RPM is  
18 not available, Respondents shall notify the EPA Emergency Response  
19 Unit, Region 9 at (415) 744-1914. Respondents shall take such  
20 action in consultation with EPA's RPM and in accordance with all  
21 applicable provisions of this Order, including but not limited to  
22 the Health and Safety Plan and the Contingency Plan required by  
23 Section X of this Order. In the event that Respondents fail to  
24 take appropriate response action as required by this Section, and  
25  
26  
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1 EPA takes that action instead, Respondents shall be liable to EPA  
2 for all costs of the response action not inconsistent with the  
3 NCP.

4 2. Nothing in the preceding Paragraph shall be deemed to  
5 limit any authority of the United States to take, direct, or or-  
6 der all appropriate action to protect human health and the en-  
7 vironment or to prevent, abate, or minimize an actual or  
8 threatened release of hazardous substances on, at, or from the  
9 Site.

#### 10 XV. EPA REVIEW OF SUBMISSIONS

11 1. After review of any deliverable, plan, report or other  
12 item which is required to be submitted for review and approval  
13 pursuant to this Order, EPA may: (a) approve the submission; (b)  
14 approve the submission with modifications; (c) disapprove the  
15 submission and direct Respondents to re-submit the document after  
16 incorporating EPA's comments; or (d) disapprove the submission  
17 and assume responsibility for performing all or any part of the  
18 response action. As used in this Order, the terms "approval by  
19 EPA", "EPA approval", or a similar term means the action  
20 described in (a) or (b) of this Paragraph. EPA approval shall be  
21 in writing.

22 2. In the event of approval or approval with modifications  
23 by EPA, Respondents shall proceed to take any action required by  
24 the plan, report, or other item, as approved or modified by EPA.

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1           3.    Upon receipt of a notice of disapproval or a request  
2   for a modification, Respondents shall, within fourteen (14) days  
3   or such longer time as specified by EPA in its notice of disap-  
4   proval or request for modification, correct the deficiencies and  
5   resubmit the plan, report, or other item for approval. Not-  
6   withstanding the notice of disapproval, or approval with  
7   modifications, Respondents shall proceed, at the direction of  
8   EPA, to take any action required by any portion of the submission  
9   which EPA has approved.

10           4.   If any submission is not approved by EPA, Respondents  
11   shall be deemed to be in violation of this Order.

12           5.   Notwithstanding any approvals which may be granted by  
13   the EPA, no warranty of any kind is provided by EPA with regard  
14   to the Work.

15           6.   Any reports, plans, specifications, schedules, appen-  
16   dices, and attachments required or established by this Order are,  
17   upon approval by EPA, incorporated into this Order.

#### 18                           XVI. PROGRESS REPORTS

19           In addition to the other deliverables set forth in this  
20   Order, Respondents shall provide progress reports to EPA with  
21   respect to actions and activities undertaken pursuant to this Or-  
22   der. Two progress reports shall be submitted: one report thirty  
23   (30) days prior to the start of Remedial Action, and a second  
24   report within thirty days after completion of the paving remedy.  
25   At a minimum these progress reports shall: (1) describe the ac-  
26   tions which have been taken to comply with this Order; (2)



1 describe all Work activities to be commenced or that have been  
2 completed; and (3) describe all problems encountered and any an-  
3 ticipated problems, any actual or anticipated delays, and solu-  
4 tions developed and implemented to address any actual or an-  
5 ticipated problems or delays.

#### 6 XVII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

7 If the Respondents conduct any sampling of Area 10, either  
8 on their own initiative or if required by EPA, the sampling shall  
9 be conducted in accordance with all applicable quality assurance  
10 and quality control requirements. Any sampling proposed by  
11 Respondents shall be submitted to EPA for review and approval.

#### 12 XVIII. COMPLIANCE WITH APPLICABLE LAWS

13 1. All activities by Respondents pursuant to this Order  
14 shall be performed in accordance with the requirements of all ap-  
15 plicable federal, state, and local laws, regulations, and permit-  
16 ting requirements. EPA has determined that the response actions  
17 required by this Order, if performed in accordance with this Or-  
18 der, are consistent with the National Contingency Plan (NCP).

19 2. As provided in Section 121(e) of CERCLA and in the NCP,  
20 no permit shall be required for any portion of the Work conducted  
21 entirely on-site. Where any portion of the Work requires a  
22 federal or state permit or approval, Respondents shall submit  
23 timely applications and take all other actions necessary to ob-  
24 tain and to comply with all such permits or approvals.

1           3. This Order is not, and shall not be construed to be, a  
2 permit issued pursuant to any federal or state statute or regula-  
3 tion.

4           4. Nothing in this Order shall be deemed to constitute a  
5 preauthorization of a CERCLA claim within the meaning of Sections  
6 111 or 112 of CERCLA, 42 U.S.C. Section 9611 or 9612, or 40  
7 C.F.R. Section 300.25(d).

8                           XIX. REMEDIAL PROJECT MANAGER

9           1. All communications, whether written or oral, from Respon-  
10 dents to EPA shall be directed to EPA's Remedial Project Manager  
11 ("RPM") with a copy of any notifications required by this Order  
12 directed to EPA's Assistant Regional Counsel. Respondents shall  
13 submit to EPA two copies of all documents, including plans,  
14 reports, and other correspondence, which are developed pursuant  
15 to this Order, and shall send these documents by certified mail,  
16 return receipt requested. EPA's Remedial Project Manager is:

17           Eric Yunker, 75 Hawthorne Street (H-6-2), San Francisco, CA  
18 94105, phone number: (415) 744-2217.

19 EPA's Assistant Regional Counsel is:

20           Allyn L. Stern, Office of Regional Counsel, 75 Hawthorne  
21 Street, San Francisco, CA 94105, phone number (415) 744-1376.

22           2. EPA may change its Remedial Project Manager or Assis-  
23 tant Regional Counsel.

24           3. EPA's RPM shall have the authority lawfully vested in a  
25 Remedial Project Manager (RPM) and in an On-Scene Coordinator  
26 (OSC) by the National Contingency Plan, 40 C.F.R. Part 300.

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1 EPA's RPM shall have authority, consistent with the National Con-  
2 tingency Plan, to halt any work required by this Order, and to  
3 take any necessary response action.

4 4. Within ten (10) days after the effective date of this  
5 Order, Respondents shall designate a Project Coordinator to rep-  
6 resent them regarding the Work addressed in this Order, and shall  
7 submit the name, address, and telephone number of the Project  
8 Coordinator to EPA. Respondents' Project Coordinator shall be  
9 responsible for overseeing Respondents' implementation of this  
10 Order and for coordination of communication between EPA and  
11 Respondents.

12 XX. ACCESS TO SITE NOT OWNED BY RESPONDENTS

13 1. If Area 10, any other area that is to be used for ac-  
14 cess, property where documents required to be prepared or main-  
15 tained by this Order are located, or other property subject to or  
16 affected by the clean up, is owned in whole or in part by parties  
17 other than those bound by this Order, Respondents shall obtain  
18 site access agreements from the present owner(s) within thirty  
19 (30) days of the effective date of this Order. Such agreements  
20 shall provide access for EPA, its contractors and oversight offi-  
21 cials, the state and its contractors, and Respondents or Respon-  
22 dents' authorized representatives and contractors, and such  
23 agreements shall specify that Respondents are not EPA's represen-  
24 tative with respect to liability associated with the Work con-  
25 ducted at Area 10. Copies of such agreements shall be provided  
26 to EPA prior to Respondents' initiation of field activities.

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1           2. If access agreements are not obtained within the time  
2 referenced above, Respondents shall immediately notify EPA of  
3 their failure to obtain access. In its sole discretion, EPA may  
4 decide to perform those response actions with EPA contractors at  
5 the property in question or take other action with regard to ac-  
6 cess issues. If EPA decides to perform those tasks or ac-  
7 tivities, Respondents shall perform all other activities not re-  
8 quiring access to that property. Respondents shall integrate the  
9 results of any such tasks undertaken by EPA into its reports and  
10 deliverables.

11           XXI. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

12           1. Respondents shall allow EPA and its authorized represen-  
13 tatives and contractors to enter and freely move about all  
14 property at Area 10 and other areas subject to or affected by the  
15 Work under this Order or where documents required to be prepared  
16 or maintained by this Order are located as deemed necessary by  
17 EPA, including such access for the purposes of inspecting condi-  
18 tions, activities, the results of activities, records, operating  
19 logs, and contracts related to the Site or Respondents and their  
20 representatives or contractors pursuant to this Order; reviewing  
21 the progress of Respondents in carrying out the terms of this Or-  
22 der; conducting tests if EPA or its authorized representatives or  
23 contractors deem necessary; using a camera, sound recording  
24 device or other documentary type equipment; and verifying the  
25 data submitted to EPA by Respondents. Respondents shall allow  
26 EPA and its authorized representatives to enter Area 10, to in-

1 spect and copy all records, files, photographs, documents, sam-  
2 pling and monitoring data, and other writings related to Work un-  
3 dertaken in carrying out this Order. Nothing herein shall be in-  
4 terpreted as limiting or affecting EPA's right of entry or in-  
5 spection authority under federal law.

6 2. Under the provisions of Section 104(e) of CERCLA, 42  
7 U.S.C. Section, 9604(e), EPA explicitly reserves the right to ob-  
8 serve the Work of Respondents as it is performed.

9 3. Respondents may assert a claim of business confiden-  
10 tiality covering part or all of the information submitted to EPA  
11 pursuant to the terms of this Order under 40 C.F.R. section 2.203  
12 only if such claim is not inconsistent with Section 104(e)(7) of  
13 CERCLA, 42 U.S.C. section 9604(e)(7), or other provisions of law.  
14 Any such claim shall be asserted in the manner described by 40  
15 C.F.R. section 2.203(b) and substantiated by Respondents at the  
16 time the claim is made. Information determined by EPA to be con-  
17 fidential will be given the protection specified in 40 C.F.R.  
18 Part 2. If no such claim accompanies the information when it is  
19 submitted to EPA, it may be made available to the public by EPA  
20 or the state without further notice to the Respondents. Respon-  
21 dents shall not assert confidentiality claims with respect to any  
22 sampling or analytical data or reports generated under this Order  
23 or for documents that fall under Section 104(e)(7)(F) of CERCLA,  
24 42 U.S.C. Section 9604(e)(7)(F).

1           4.    If Respondents claim that any documents referenced in  
2   Paragraph 3 of this Section are confidential information, they  
3   shall maintain an index of such documents for the period during  
4   which this Order is in effect. The index shall contain, for each  
5   document, the date, author, addressee, and subject of the docu-  
6   ment. Upon written request from EPA, Respondents shall submit a  
7   copy of the index to EPA.

8                               XXII. RECORD PRESERVATION

9           1.    Respondents shall provide to EPA upon request, copies  
10   of any and all documents and information within its possession or  
11   control or in possession or control of its divisions, employees,  
12   agents, accountants, contractors, or attorneys (other than docu-  
13   ments or information privileged under the attorney-client or work  
14   product privileges) relating to activities at Area 10 or to the  
15   implementation of this Order, including but not limited to sam-  
16   pling, analysis, chain of custody records, manifests, trucking  
17   logs, receipts, reports, sample traffic routing, correspondence,  
18   or other documents or information related to the Work. Respon-  
19   dents shall also make available to EPA for purposes of investiga-  
20   tion, information gathering, or testimony, its employees, agents,  
21   or representatives with knowledge of relevant facts concerning  
22   the performance of the Work.

23           2.    For a period of six (6) years following Respondents'  
24   completion of the Work pursuant to Section X.C.10. of this Order,  
25   Respondents shall preserve and retain all records and documents  
26   in their possession or control or in the possession or control of  
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1 their employees, agents, accountants, contractors or attorneys,  
2 that relate in any manner to the Work, environmental conditions  
3 at the Site, the causes of the environmental conditions at Area  
4 10, Respondents' liability for those environmental conditions,  
5 Respondents' use or disposal of hazardous substances at the Site,  
6 or the implementation of this Order. At the conclusion of this  
7 document retention period, Respondents shall notify EPA at least  
8 ninety (90) days prior to the destruction of any such records or  
9 documents, and upon request by EPA, Respondents shall deliver any  
10 such records or documents to EPA.

11 3. Until six (6) years after Respondents' completion of  
12 the Work pursuant to Section X.C.10. of this Order, Respondents  
13 shall preserve, and shall instruct their contractors and agents  
14 to preserve, all documents, records, and information of whatever  
15 kind, nature or description relating to the performance of the  
16 Work. Upon the conclusion of this document retention period,  
17 Respondents shall notify EPA at least ninety (90) days prior to  
18 the destruction of any such records, documents or information,  
19 and, upon request of EPA, Respondents shall deliver all such  
20 documents, records and information to EPA.

21 4. Within thirty (30) days after the effective date of  
22 this Order, each Respondent shall submit a written certification  
23 to EPA's RPM stating whether or not Respondents have altered,  
24 mutilated, discarded, disposed of, or destroyed, since notifica-  
25 tion of potential liability by the United States or the State,  
26 any records, documents or other information relating to: 1) its  
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1 potential liability under CERCLA, 2) and its use of or disposal  
2 of hazardous substances with regard to the Site. Respondents  
3 shall not dispose of any such documents after the effective date  
4 of this Order without prior approval by EPA. Respondents shall,  
5 upon EPA's request and at no cost to EPA, deliver the documents  
6 or copies of the documents to EPA.

7 XXIII. DELAY IN PERFORMANCE

8 1. Any delay in performance of this Order that, in EPA's  
9 judgment, is not properly justified by Respondents under the  
10 terms of this Paragraph shall be considered a violation of this  
11 Order. Any delay in performance of this Order shall not affect  
12 Respondents' obligations to fully comply with all terms and con-  
13 ditions of this Order.

14 2. Respondents shall notify EPA of any delay or an-  
15 ticipated delay in performing any requirement of this Order.  
16 Such notification shall be made by telephone to EPA's RPM within  
17 twenty-four (24) hours after Respondents first knew or should  
18 have known that a delay might occur. Respondents shall adopt all  
19 reasonable measures to avoid or minimize any such delay. Within  
20 four (4) days after notifying EPA by telephone, Respondents shall  
21 provide written notification fully describing the nature of the  
22 delay, any asserted justification for delay, any reason why  
23 Respondents should not be held strictly accountable for failing  
24 to comply with any relevant requirements of this Order, the  
25 measures planned and taken to minimize the delay, and a schedule  
26 for implementing the measures that will be taken to mitigate the

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1 effect of the delay. Increased costs or expenses associated with  
2 implementation of the activities called for in this Order are not  
3 a justification for any delay in performance.

#### 4 XXIV. ASSURANCE OF ABILITY TO COMPLETE WORK

5 1. Respondents shall demonstrate their ability to complete  
6 the Work required by this Order and to pay all claims that arise  
7 from the performance of the Work by obtaining and presenting to  
8 EPA within thirty (30) days after the effective date of this Or-  
9 der, financial information which is sufficient to allow EPA to  
10 determine that Respondents have sufficient assets available to  
11 perform the Work. Respondents shall demonstrate financial as-  
12 surance in an amount no less than the estimate of cost for the  
13 Remedial Design and Remedial Action (including Operation and  
14 Maintenance) for Area 10.

15 2. At least seven (7) days prior to commencing any Work at  
16 Area 10 pursuant to this Order, Respondents shall submit to EPA a  
17 certification that Respondents or their contractors and sub-  
18 contractors have adequate insurance coverage or have indemnifica-  
19 tion for liabilities for injuries or damages to persons or  
20 property which may result from the activities to be conducted by  
21 or on behalf of Respondents pursuant to this Order. Respondents  
22 shall ensure that such insurance or indemnification is maintained  
23 for the duration of the Work required by this Order.

1 XXV. UNITED STATES NOT LIABLE

2 The United States, by issuance of this Order, assumes no  
3 liability for any injuries or damages to persons or property  
4 resulting entirely or partially from acts or omissions by Respon-  
5 dents, or their directors, officers, employees, agents, represen-  
6 tatives, successors, assigns, contractors, or consultants in car-  
7 rying out any action or activity pursuant to this Order. Neither  
8 EPA nor the United States may be deemed to be a party to any con-  
9 tract entered into by Respondents or their directors, officers,  
10 employees, agents, successors, assigns, contractors, or consult-  
11 ants in carrying out any action or activity pursuant to this Or-  
12 der. Respondents, their directors, officers, employees, agents,  
13 successors, assigns, contractors, and consultants shall not be  
14 considered agents of the United States.

15 XXVI. ENFORCEMENT AND RESERVATIONS

16 1. EPA reserves the right to bring an action against  
17 Respondents under Section 107 of CERCLA, 42 U.S.C. Section 9607,  
18 for recovery of any response costs incurred by the United States  
19 related to this Order and not reimbursed by Respondents. This  
20 reservation shall include but not be limited to past costs,  
21 direct costs, indirect costs, the costs of any response actions  
22 EPA takes under this Order, the costs of oversight, the costs of  
23 compiling the cost documentation to support oversight cost  
24 demand, as well as accrued interest as provided in Section 107(a)  
25 of CERCLA. In addition, EPA reserves the right to bring an ac-  
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1 tion against Respondents for civil penalties under Section 106(b)  
2 of CERCLA, 42 U.S.C. Section 9606(b), and for treble damages un-  
3 der Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

4 2. Notwithstanding any other provision of this Order, at  
5 any time during the response action, EPA may perform its own  
6 studies, complete the response action (or any portion of the  
7 response action) as provided in CERCLA and the NCP, and seek  
8 reimbursement from Respondents for their costs, or seek any other  
9 appropriate relief.

10 3. Nothing in this Order shall preclude EPA from taking  
11 any additional enforcement actions, including modification of  
12 this Order or issuance of additional Orders, and/or additional  
13 remedial or removal actions as EPA may deem necessary, or from  
14 requiring Respondents in the future to perform additional ac-  
15 tivities pursuant to CERCLA, 42 U.S.C. Section 9606(a), et seq.,  
16 or any other applicable law. Respondents shall be liable as  
17 provided in CERCLA Section 107(a), 42 U.S.C. Section 9607(a), for  
18 the costs of any such additional actions.

19 4. Notwithstanding any provision of this Order, the United  
20 States retains all of its information gathering, inspection and  
21 enforcement authorities and rights under CERCLA, RCRA and any  
22 other applicable statutes or regulations.

## 23 XXVII. CIVIL PENALTIES

24 1. Respondents shall be subject to civil penalties under  
25 Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), of not more  
26 than \$25,000 for each day in which Respondents willfully violate,  
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1 or fail or refuse to comply with this Order without sufficient  
2 cause. In addition, failure to properly provide response action  
3 under this Order, or any portion hereof, without sufficient  
4 cause, may result in liability under Section 107(c)(3) of CERCLA,  
5 42 U.S.C. Section 9607(c)(3), for punitive damages in an amount  
6 at least equal to, and not more than three times, the amount of  
7 any costs incurred by the Fund as a result of such failure to  
8 take proper action.

9 2. Nothing in this Order shall constitute or be construed  
10 as a release from any claim, cause of action or demand in law or  
11 equity against any person for any liability it may have arising  
12 out of or relating in any way to the Site.

13 3. If a court issues an order that invalidates any provi-  
14 sion of this Order or finds that Respondents have sufficient  
15 cause not to comply with one or more provisions of this Order,  
16 Respondents shall remain bound to comply with all provisions of  
17 this Order not invalidated by the court's order.

18 XXVIII. ADMINISTRATIVE RECORD

19 Upon request by EPA, Respondents must submit to EPA all  
20 documents related to the selection of the response action for  
21 possible inclusion in the administrative record file.

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1                   XXIX. EFFECTIVE DATE AND COMPUTATION OF TIME

2           This Order shall be effective 30 days after signature of  
3   this Order by the Director, Hazardous Waste Management Division.  
4   Unless otherwise specified in this Order, all times for perfor-  
5   mance of ordered activities shall be calculated from this effec-  
6   tive date.

7                   XXX. SECTION HEADINGS AND ATTACHMENTS

8           1. The section headings set forth in this Order and its  
9   Table of Contents are included for convenience of reference only  
10   and shall be disregarded in the construction and interpretation  
11   of any of the provisions of this Order.

12          2. The following attachments are appended to and incor-  
13   porated into this Order:

14                "Attachment 1" is the ROD.

15                "Attachment 2" is the Final Sampling and Analysis Sum-  
16   mary Report for the Remedial Design/Remedial Action at the Truck-  
17   yards in the South Bay Asbestos Area, San Jose, California (July  
18   29, 1991).

19                   XXXI. OPPORTUNITY TO CONFER

20          Respondents may, within fourteen (14) days after the date  
21   this Order is signed, request a conference with EPA's Assistant  
22   Regional Counsel and Remedial Project Manager to discuss this Or-  
23   der. The purpose and scope of the conference shall be limited to  
24   issues involving the implementation of the response actions re-  
25   quired by this Order and extent to which Respondents intend to  
26   comply with this Order. This conference is not an evidentiary

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1 hearing, and does not constitute a proceeding to challenge this  
2 Order. It does not give Respondents a right to seek review of  
3 this Order, or to seek resolution of potential liability, and no  
4 official stenographic record of the conference will be made.  
5 At any conference held pursuant to a Respondent's request, a  
6 Respondent may appear in person or be represented by an attorney  
7 or other representative. Requests for a conference must be by  
8 telephone followed by written confirmation mailed that day to  
9 EPA's Assistant Regional Counsel.

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12 So Ordered, this 30<sup>th</sup> day of September, 1991.

13

14 BY:   
15 Jeffrey Zelikson  
16 Director, Hazardous Waste Management Division  
U.S. Environmental Protection Agency  
Region 9

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